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No. 89-322

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

vs.

THARON RAWSON, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR SETH RAWSON AND CINDY RAWSON; BERNIECE JOHNSON, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON AND JOHN RUSSEL JOHNSON; LAURA DUNBAR, AS GUARDIAN AD LITEM FOR RICKINA ROSSITER AND GLEN ROSSITER, JR.; AND MARY WOOD, AS GUARDIAN AD LITEM FOR LESLIE D. WOOD,
Respondents.

On Writ of Certiorari To The
Supreme Court of Idaho

BRIEF OF CONTINENTAL BEVERAGE PACKAGING, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

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Continental Beverage Packaging, Inc. ("Continental"), with the consent of all parties, files this brief as amicus curiae in support of Petitioner United Steelworkers of America ("Steelworkers"). Continental urges the Court to reverse the judgment of the Supreme Court of the State of Idaho on the specific ground that the Respondents' claims are preempted by § 301 of the Labor Management Relations

Act because the duties which Respondents claim are owed to them by Steelworkers are created by the collective bargaining agreement between Steelworkers and Respondents' decedents' employer.[1]

INTEREST OF AMICUS CURIAE

Continental is party to *United States Can Co. v. International Association of Machinists & Aerospace Workers*, No. 89-508 (October Term 1989). On January 8, 1990, this Court denied Continental's petition for certiorari to review a decision of the Wisconsin Supreme Court holding that a state claim, arising under Wisconsin's version of the Uniform Fraudulent Conveyance Act, to enforce the economic terms of a collective bargaining agreement was not preempted by § 301 of the Labor Management Relations Act. As of the date of submitting this brief amicus, Continental has a petition for rehearing from the denial of that petition pending before this Court. Continental believes that the reversal of the decision of the Idaho Supreme Court on the specific ground urged in this brief would compel reversal or remand of the decision of the Wisconsin Supreme Court in Case No. 89-508.

SUMMARY OF ARGUMENT

Amicus submits that the analysis of which claims asserted by parties to collective bargaining agreements against other parties to such agreements are preempted, would be simplified and sharpened by requiring courts to focus their attention on the issue of *whether* the *substantive right* being asserted *was created by* the provisions of *a collective bargaining agreement*. This analysis, which is sufficient to reach a correct result in nearly all § 301 preemption cases, including the instant case, is essential to comprehensive preemption of collective bargaining issues and is easier to apply than an analysis of whether "substantial analysis" or "substantial interpretation" is required.

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[1]Amicus does not mean to suggest that other grounds for reversal are not presented, but Amicus has no interest in those.

ARGUMENT

CLAIMS WHICH ARE FOUNDED ON RIGHTS CREATED BY THE SUBSTANTIVE PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT ARE PREEMPTED BY § 301.

By its express terms, § 301 of the Labor Management Relations Act provides a jurisdictional basis for federal courts to hear "[s]uits for violation of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a). This Court has consistently construed § 301 to do "more than simply confer jurisdiction on federal courts to hear suits charging violations of collective-bargaining agreements. . . . '[It is] a congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts.' " *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. 851, 855-56 (1987) (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985)); *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 450-51 (1957). In order to fulfill this mandate, ' "substantive principles of federal labor law must be paramount in the area covered by [§ 301].' " *Hechler*, 481 U.S. at 856 (quoting *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962)).

With these principles well settled, this Court commenced in *Lueck* to define the boundaries of the "area covered by § 301." In *Lueck*, this Court held that an attempt to assert a claim arising under state law was preempted by § 301 if it was grounded in a collective bargaining agreement:

> If the policies that animate § 301 are to be given their proper range, however, the pre-emptive effect of § 301 must extend beyond suits alleging contract violations. *These policies require that "the relationships created by [a collective-bargaining] agreement" be defined by application of "an evolving federal common law grounded in national labor policy."* . . . Thus, questions relating to what the parties to a labor agreement agreed, *and what legal consequences were intended to flow from breaches of that agreement*, must be resolved by reference to

uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract.

471 U.S. at 210-11 (citation omitted) (emphasis added).

In *Hechler*, this Court applied the principles stated in *Lueck* to hold that an attempt to assert a claim for negligent performance of a duty created by a collective bargaining agreement was preempted by § 301:

> Under the principle[s] set forth in *Allis-Chalmers*, we must determine if respondent's claim is sufficiently independent of the collective-bargaining agreement to withstand the pre-emptive force of § 301.
>
> . . . .
>
> . . . [Respondents' claim is not sufficiently independent because] [i]n order to determine the Union's tort liability . . . a court would have to ascertain, first, whether the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure that Hechler was provided a safe workplace, and, second, the nature and scope of that duty . . . .

481 U.S. at 859, 862.

The holdings of *Lueck* and *Hechler* were summarized in *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987):

> Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims "substantially dependent on analysis of a collective-bargaining agreement."

Id. at 394 (quoting *Hechler*, 481 U.S. at 859 n.3).

The foregoing passage from *Williams* was quoted with approval in *Lingle v. Norge Division of Magic Chef, Inc.*, 108 S. Ct. 1877, 1883-84 n.10 (1988), the most recent § 301 preemption case. In *Lingle*, this Court held that a state claim for retaliatory discharge for asserting a workers compensation claim was not preempted. Because it was perfectly apparent that the tort of retaliatory discharge was not, in any sense of the word, "founded directly on rights created by [the] collective bargaining agreement," this Court addressed only the issue of whether the claim required interpretation of the collective bargaining agreement and concluded it did not:

> Thus, the state-law remedy in this case is "independent" of the collective-bargaining agreement in the sense of "independent" that matters for § 301 pre-emption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement.

Id at 1882.

There is certainly no affirmative suggestion in *Lingle* that claims based on "rights created by" a collective bargaining agreement were no longer preempted, and the citation of *Williams* confirms that there was no intent to remove such claims from the scope of § 301 preemption. However, analysis of § 301 preemption has suffered subsequent to *Lingle* because the lower courts have relied on the phrase "application of state law is pre-empted by § 301 . . . *only* if such application requires the interpretation of a collective-bargaining agreement," *Lingle*, 108 S. Ct. at 1885, to skip over or give short shrift to the issue of whether the rights sued upon were "created by" the collective bargaining agreement in issue. Treating the cases presented to this Court on § 301 preemption or Railway Labor Act § 3 preemption since *Lingle* as typical of all lower court decisions, out of twenty such cases,[2] only one, *Terwilliger v. Greyhound Lines, Inc.*, 882 F.2d

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[2]*See Terwilliger v. Greyhound Lines, Inc.*, 882 F.2d 1033 (6th Cir.), *petition for cert. filed*, 58 U.S.L.W. 3430 (U.S. Dec. 22, 1989) (No. 89-999); *Wells v. General Motors Corp.*, 881 F.2d 166 (5th Cir.), *petition for cert. filed*, 58 U.S.L.W. 3469 (U.S. Dec. 27, 1989) (No. 89-1067); *Berda v. CBS Inc.*, 881 F.2d 20 (3d Cir. 1989), *cert. denied*, 58 U.S.L.W. 3466 (U.S. Jan. 22, 1990) (No. 89-589); *Cleary v. Michigan Bell Tel. Co.*, 880 F.2d 1321 (6th Cir. 1989), *cert. denied*, 58 U.S.L.W. 3465 (U.S. Jan. 22, 1990) (No. 89-844); *Smolarek v. Chrysler Corp.*, 879 F.2d 1326 (6th Cir.) (en banc), *cert. denied*, 110 S. Ct. 539 (1989); *Wilkinson v. Safeway Stores, Inc.*, 879 F.2d 866 (9th Cir.), *cert. denied*, 110 S. Ct. 540 (1989); *Deford v. Soo Line R.R.*, 867 F.2d 1080 (8th Cir.), *cert. denied*, 109 S. Ct. 3265

1033 (6th Cir. 1989), *petition for cert. filed*, 58 U.S.L.W. 3430 (U.S. Dec. 22, 1989) (No. 89-999), clearly analyzes the "created by" and the "interpretation" bases of § 301 preemption as separate tests:[3]

> Thus, in evaluating Terwilliger's claim, we must determine first, whether resolution of Terwilliger's state-law claim of fraud and misrepresentation requires interpretation of the terms of the collective bargaining agreement such that this claim should have been decided by arbitration . . . and second, whether his claim is based on rights created by the collective bargaining agreement or under state law.

Id. at 1037.

Terwilliger concluded that both tests were met because the employer was found to have failed to abide by the terms of the agree-

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(Continuation of Footnote 2)
(1989); *Jackson v. Liquid Carbonic Corp.*, 863 F.2d 111 (1st Cir. 1988), *cert. denied*, 109 S. Ct. 3158 (1989); *Miller v. Publishers Paper Co.*, 861 F.2d 268 (9th Cir. 1988), *cert. denied*, 109 S. Ct. 3160 (1989); *Utility Workers, Local No. 246 v. Southern Cal. Edison Co.*, 852 F.2d 1083 (9th Cir. 1988), *cert. denied*, 109 S. Ct. 1530 (1989); *Hammond v. Terminal R.R. Ass'n*, 848 F.2d 95 (7th Cir. 1988), *cert. denied*, 109 S. Ct. 1170 (1989); *McCall v. Chesapeake & Ohio Ry.*, 844 F.2d 294 (6th Cir.), *cert. denied*, 109 S. Ct. 196 (1988); *Jones v. Truck Drivers Local Union No. 299*, 838 F.2d 856 (6th Cir. 1988), *cert. denied*, 110 S. Ct. 404 (1989); *Birtell v. Lockheed-California Co.*, 201 Cal. App. 3d 293, 247 Cal. Rptr. 86 (1988), *cert. denied*, 109 S. Ct. 869 (1989); *Alpha Beta, Inc. v. Superior Court (Nahm)*, 198 Cal. App. 3d 1390, 244 Cal. Rptr. 414, *cert. denied*, 109 S. Ct. 392 (1988); *Rawson v. United Steelworkers*, 115 Idaho 785, 770 P.2d 794 (1988), *cert. granted*, 110 S. Ct. 714 (1990); *Aubuschon v. International Mill Serv.*, 123 Ill. 2d 555, 530 N.E. 2d 976 (1988), *cert. denied*, 109 S. Ct. 3157 (1989); *LePore v. National Tool & Mfg. Co.*, 115 N.J. 226, 557 A.2d 1371, *cert. denied*, 110 S. Ct. 366 (1989); *Pet, Inc. v. Buckner*, No. 65,989 (Okla. Ct. App. Oct. 20, 1987), *cert. denied*, 109 S. Ct. 60 (1988); *International Ass'n of Machinists & Aerospace Workers v. United States Can Co.*, 150 Wis. 2d 479, 441 N.W.2d 710 (1989), *cert. denied*, 110 S. Ct. 718 (1990).

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[3] *Terwilliger* claims that *Smolarek v. Chrysler Corp.*, 879 F.2d 1326, 1331 (6th Cir.) (en banc), *cert. denied*, 110 S. Ct. 539 (1989), applied the same analysis. While that claim may be true, *Smolarek's* analysis is certainly not as crisply divided into two parts as is *Terwilliger's*.

ment — which would require interpretation — and the claimed right to reinstatement arose solely from the collective bargaining agreement — *i.e.*, was "created by" the collective bargaining agreement.

In order to prevent the lower courts from mistakenly assuming that the "rights created by" test for preemption has been abandoned by this Court, it is essential that this Court clearly rearticulate and apply that test in the instant case.

There can be no question that the collective bargaining agreement in the instant case imposed a duty of inspection on the Steelworkers. The majority and dissenting opinions below, prior to remand, agreed that the collective bargaining agreement did impose safety obligations on the Steelworkers:

> The Collective Bargaining Agreement provided for the Union's safety inspection function, which service was bought and paid for by union dues.
>
> . . . .
>
> . . . Because the Union, pursuant to the provisions of the collective bargaining agreement, had contracted to inspect and, *in fact, inspected* the mine, it owed the (minimal) duty to its members to exercise due care in inspecting and in reporting the findings of its inspection.

Rawson v. United Steelworkers, 726 P.2d 742, 747, 750 (Idaho 1986), *vacated and remanded*, 482 U.S. 901 (1987).

> [T]he collective bargaining agreement [in question] provided for the formation and membership of the Safety Committee and set forth the duties of the Safety Committee.

Id. at 763 (Bakes, J., dissenting).

Given the one-time agreement of the entire Idaho Supreme Court that the Respondents' claims are based on rights created by the collective bargaining agreement, there can be no doubt that these claims are preempted under the "created by" test. Indeed, *Hechler* expressly held, on nearly identical facts, that when "the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure that Hechler was provided a safe workplace," a claim for

breach of that duty is preempted. 481 U.S. at 862.[4]

It is important that this Court expressly state that Respondents' claims are preempted on the ground that the Respondents' claims are based on rights created by the collective bargaining agreement.

First, it is, after all, "suits for violations" of collective bargaining agreements which are expressly, although not exclusively, preempted by § 301. Therefore, it is most logical to inquire *first* whether a violation is claimed, *i.e.*, if the claim asserts breach of a right or duty created by the agreement. That inquiry is sufficient to decide preemption here. It is sufficient to explain the result in *Lueck* and all this Court's subsequent decisions. It should be sufficient to decide most § 301 cases.

Second, as this Court stated in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), § 301 preemption must be "comprehensive." "Comprehensive" preemption requires that every right which is created by provisions of a collective bargaining agreement be determined according to federal law. Otherwise the provision of its agreement may have different legal effects in different jurisdictions. This is not just a question of interpretation; federal labor policy requires that the *effect* of the provisions of a collective bargaining agreement be uniform. *See Lueck*, 471 U.S. at 210-11. Uniformity can be lost as quickly through applying varying state remedies to crystal clear contractual language as it can through various interpretations of ambiguous language. Therefore, § 301 must preempt *all* claims which are *based on rights* contained in a collective bargaining agreement or "comprehensive" preemption will be lost.

Finally, the "rights created by" analysis offers a much simpler analysis than "interpretation."[5] It is comparatively easy to deter-

[4]It is equally true that *Hechler* leaves no doubt that questions of contract interpretation underlie any finding of tort liability on the facts of this case, *see* 481 U.S. at 862, but the goal of Amicus is to encourage the Court not to rely on that ground alone.

[5]This is not to say that interpretation is not a proper ground for preemption, only that it should not be necessary to reach that ground in most cases.

mine whether a necessary element of a claim includes reliance on the terms of a contract. It is clearly in the interests of efficient administration of justice that a simple test be applied if at all possible.

CONCLUSION

For the reasons stated above, Amicus respectfully suggests that the decision of the Idaho Supreme Court be reversed and the cause be remanded with instructions to dismiss the case, on the ground that the Respondents' claims are based on rights created by a collective bargaining agreement.

Respectfully submitted,

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